



February 2005  
Volume 74  
Number 2

United States  
Department of Justice  
Federal Bureau of Investigation  
Washington, DC 20535-0001

Robert S. Mueller III  
Director

Contributors' opinions and statements  
should not be considered an  
endorsement by the FBI for any policy,  
program, or service.

The attorney general has determined  
that the publication of this periodical is  
necessary in the transaction of the  
public business required by law. Use  
of funds for printing this periodical has  
been approved by the director of the  
Office of Management and Budget.

The *FBI Law Enforcement Bulletin*  
(ISSN-0014-5688) is published  
monthly by the Federal Bureau of  
Investigation, 935 Pennsylvania  
Avenue, N.W., Washington, D.C.  
20535-0001. Periodicals postage paid  
at Washington, D.C., and additional  
mailing offices. Postmaster: Send  
address changes to Editor, *FBI Law  
Enforcement Bulletin*, FBI Academy,  
Madison Building, Room 201,  
Quantico, VA 22135.

**Editor**  
John E. Ott

**Associate Editors**  
Cynthia L. Lewis  
David W. MacWha  
Bunny S. Morris

**Art Director**  
Denise Bennett Smith

**Assistant Art Director**  
Stephanie L. Lowe

This publication is produced by  
members of the Law Enforcement  
Communication Unit, Training and  
Development Division.

**Internet Address**  
leb@fbiacademy.edu

Send article submissions to Editor,  
*FBI Law Enforcement Bulletin*,  
FBI Academy, Madison Building,  
Room 201, Quantico, VA 22135.

# FBI Law Enforcement Bulletin

## Features

### Implementing a Cold Case Homicide Unit

1

*Cold case homicides present unique challenges to the investigators attempting to solve them.*

### Suicide by Cop

8

By Anthony J. Pinizzotto,  
Edward F. Davis,  
and Charles E. Miller III

*The adoption of a national definition of suicide by cop, criteria to determine what constitutes such acts, and a reporting mechanism to record them must occur to effectively address the devastation brought about by this phenomenon.*

### Revoking Consent to Search

25

By Jayme W. Holcomb

*Officers must be aware of both the context in which the consent to search is withdrawn and the exact manner in which the individual revoked consent to search.*

## Departments

**7 Book Review**  
Treating Police Stress

**21 Focus on Forensics**  
Blood Spatter Interpretation at  
Crime and Accident Scenes

**20 The Bulletin Honors**

# *Implementing a Cold Case Homicide Unit*

## *A Challenging Task*

By VIVIAN B. LORD, Ph.D.



© Comstock Images

The local newspaper reported that the police department had more than 350 unsolved homicides, some dating back to 1979. The article stated that investigators were lobbying for a cold case squad; families of victims were complaining; and members of the city council were asking questions.<sup>1</sup> This conflict left the chief struggling over a dilemma that confronts many leaders of law enforcement agencies with limited resources. Does an administrator dedicate homicide investigators to work on decade-old cases that they have

little chance of clearing when numerous new murders, not to mention a number of suicides, accidental deaths, kidnappings, officer-involved shootings, and serious assaults, occur each year?

With advanced technology to analyze physical evidence and the growth of DNA and fingerprint national databases, interest in old, unsolved homicides has increased steadily over the past few years.<sup>2</sup> The media has begun reporting on the cold case detective units implemented across the nation, but little has appeared about the

issues they face.<sup>3</sup> Unlike many television portrayals, cold case homicides are not easily solved or prosecuted. After all, if the cases could have been resolved quickly when "hot," why would they still be open 10 to 25 years later?

To find some answers, the author reviewed the Charlotte-Mecklenburg, North Carolina, Police Department's cold case unit about a year after its inception. By interviewing homicide investigators, technical analysts, and district attorneys involved with cold cases, she discovered some of the unique challenges



***“A major premise of implementing cold case units is that new technology will enhance previous examinations conducted on physical evidence.”***

*Dr. Lord chairs the criminal justice department at the University of North Carolina at Charlotte and is a member of the Charlotte-Mecklenburg Police Department's homicide review team.*

such units encounter. But, more important, she found a key to the department's response: combining volunteer resources with experienced investigative expertise.<sup>4</sup>

### **Unit Development**

First, the department assigned two veteran detectives, representing 10 percent of its homicide personnel, to the cold case unit. Both wanted to work on the old investigations because they felt that given a concentrated effort, they could clear a number of them and provide the families of the victims with some measure of comfort by showing that the department would continue trying to find those responsible for their loved ones' deaths.

Next, the agency obtained assistance from the FBI's local office and National Center for Analysis of Violent Crimes.

This involvement allowed the cold case detectives to become part of the Safe Streets Task Force and be deputized as federal agents, giving them jurisdiction outside Mecklenburg County.

Last, the department implemented its concept of volunteers helping detectives review the cases. Because using volunteers constitutes a major element of community policing, the agency already had a rich reservoir of individuals working in a variety of capacities. After September 11, 2001, the volunteer spirit expanded; people were empathetic and wanted to be involved. Since March 12, 2003, three volunteers, with past law enforcement and investigative-related experience and currently retired or working in other fields, have brought many skills, opinions, and perspectives to the work that

supplement those of the seasoned homicide investigators. Most important, all three possess the vital ingredient of discreetness, thereby ensuring that all information remains confidential.

### **Review Process**

The three volunteers attempted different review formats. They ultimately decided to record information under the following headings: victimology, recap of the crime, crime scene report summary, evidence/property recovered and lab analysis results, witness information and statement recounts, related investigation, medical examiner's report summation, potential suspects, and recommended follow-up.

On an ongoing basis, they review separate cases individually, sorting and reading all of the information in the folder, before attending a meeting with the rest of the review team, comprised of the two cold case detectives, the assigned FBI agent, and the captain of the unit.<sup>5</sup> Many of the files are extensive, and, because the three volunteers have other obligations, they complete a case review about every 3 to 4 weeks. Nearly a week before the group meeting, they send a draft report of each case to the other members via e-mail. At the meeting, the volunteers summarize the ones they have

reviewed. The team provides input, suggestions, and questions, extensively discussing each case. The volunteers then incorporate the additional group information and send their final report to the assigned detective and the captain. Through this process, each reviewed case receives the benefits of the skills and experiences of at least six trained professionals.

### Case Selection

Working under pressure to prove the value of a separate cold case unit, the detectives and their supervisor at first arbitrarily selected homicides based on what they personally knew about them. They also considered those wherein victims' families actively sought answers.

However, over the course of the first year of operation, the cold case detectives realized that bringing all of the department's homicide investigators together to systematically identify cases that they thought would be solvable if time could be devoted to them would prove more fruitful. That way, the detectives who had worked on these investigations in the past could continue to have an active role. In other words, rather than the cold case detectives spending a great deal of time reading the files, the investigators originally assigned would brief them on the homicides and

potential leads. Not only would this use time more efficiently, but the detectives who had invested a great deal of energy on the cases initially still could receive credit and feel part of the investigations.

The unit has developed a criteria template to use for all cold homicides. Now, before unit personnel review a case, they complete this standardized form. Important criteria they

***Through this process, each reviewed case receives the benefits of the skills and experiences of at least six trained professionals.***

pursue include the presence and existence of physical evidence conducive to modern technology, the availability of witnesses, and an identifiable and living suspect.

### Physical Evidence Analysis

A major premise of implementing cold case units is that new technology will enhance previous examinations conducted on physical evidence. DNA analysis has changed over the past decade, and different

types serve various purposes. Even though DNA analysis may have been conducted on an early, unsolved case, it may need updating to match the results with samples from convicted offenders.<sup>6</sup>

While advanced technology, especially in DNA analysis, can help solve cold cases, several problems have emerged. First, in the past, technicians and detectives collected evidence the way that they were trained based on the analysis that examiners could conduct at the time. Therefore, investigators may not have collected evidence at the time that today could help connect the suspect to the crime scene or the victim. Second, old methods consumed a great deal of the evidence so little may remain to analyze using new technologies. Third, in some instances, deterioration of the packaging of the evidence may cause problems, particularly with DNA profiling.

Due to the difficulties of these old cases, the condition of the evidence, and the time and labor constraints, detectives should contact the laboratory before submitting the physical evidence for DNA analysis. Often, the technicians can examine the crime scene and victim photographs and review previous lab results to determine which evidence would be more probative. Also, even though little of the sample

## Criteria for Opening Cold Case Homicides

1. Does physical evidence exist?

DNA yes \_\_\_\_\_ no \_\_\_\_\_

Latent prints yes \_\_\_\_\_ no \_\_\_\_\_

Ballistics yes \_\_\_\_\_ no \_\_\_\_\_

Other yes \_\_\_\_\_ no \_\_\_\_\_

2. Is physical evidence still in property control or available? yes \_\_\_\_\_ no \_\_\_\_\_

Location \_\_\_\_\_

3. Have witnesses been identified? yes \_\_\_\_\_ no \_\_\_\_\_

Number of witnesses \_\_\_\_\_

Eye witnesses \_\_\_\_\_ Other witnesses \_\_\_\_\_

Witness availability \_\_\_\_\_

4. Have suspect(s) been identified? yes \_\_\_\_\_ no \_\_\_\_\_

In custody yes \_\_\_\_\_ no \_\_\_\_\_ Status \_\_\_\_\_

Terminally ill yes \_\_\_\_\_ no \_\_\_\_\_ Deceased yes \_\_\_\_\_ no \_\_\_\_\_

5. Is there opportunity for multiple clearances? yes \_\_\_\_\_ no \_\_\_\_\_

6. Has the case been previously presented to the District Attorney's Office?

yes \_\_\_\_\_ no \_\_\_\_\_ Arrest made yes \_\_\_\_\_ no \_\_\_\_\_

7. Clearance potential excellent \_\_\_\_\_ good \_\_\_\_\_ poor \_\_\_\_\_

8. Should case be submitted to review team? yes \_\_\_\_\_ no \_\_\_\_\_

Case reviewed by \_\_\_\_\_ Date \_\_\_\_\_

Supervisor \_\_\_\_\_

remains or all of it was consumed during an earlier analysis, examiners still may be able to analyze the prior DNA extracts using newer methods. Finally, because the detectives must be able to testify to the condition of the evidence—

including the packaging, which often has begun to deteriorate, become damp, or been crushed—they should document and photograph the packaging prior to sending the material to the laboratory, especially an external one.

### Prosecution Challenges

District attorneys' opinions seem to vary on the resources that agencies should invest in cold case homicides. For example, Mecklenburg County has limited prosecutor resources; 5 out of approximately

40 assistant district attorneys prosecute murders. This translates into 12 trials annually, with more than 100 homicides currently pending. Although overall support for the investigation of cold cases exists, some prosecutors may not be convinced that it is the best use of their resources. If the suspect of a cold case already is serving a lengthy prison sentence for other charges, they feel that they can protect society better by attempting to place active offenders behind bars. Although Mecklenburg County prosecutors understand that the prosecution of cold cases sends the message to murderers and the families of their victims that these cases never will be forgotten, they also want to ensure that the ones brought to them warrant prosecution. To this end, the prosecutors consider early and frequent communication between the cold case investigators and themselves essential. Only with such communication can the investigators and prosecutors develop a shared approach to determining what evidence will suffice to successfully prosecute a case. Because prosecutors fear that premature arrests or the presentation of weak cases could undermine the credibility of the cold case unit and needlessly raise the hopes of victims' families, they evaluate the cold cases presented by the unit

based on the same criteria that they use for all other homicides.

The author interviewed approximately 20 other district or state attorneys with experience prosecuting cold homicides and found that they have had positive experiences and consider such investigations a priority. They acknowledged that because of the publicity that cold cases generate, it is politically disastrous to lose them. Jurors are sympathetic and want to participate in the solving of an

***...the prosecutors consider early and frequent communication between the cold case investigators and themselves essential.***

old case, but, from crime programs on television, they have acquired high expectations.

Although these attorneys contacted represented only a handful of those who prosecute homicides in the United States, they appeared to pride themselves on prosecuting and winning risky cases. They talked about presenting a cold case homicide to the jury as a mystery so that the members

can "play detective." These prosecutors recognized that it took additional work and skill to convict defendants of murders where the crimes occurred many years before, where witnesses must search their memories for events that have receded to the far corners of their minds, and where physical evidence may have deteriorated.

### Sample Successes

The author's interviews revealed numerous samples that provided insight into the challenges cold homicides present to the criminal justice system. In several instances, the remains of the murdered victim emerged decades afterward. Once the body was identified and garnered publicity, witnesses came forward. Sometimes, the relationship between the defendant and the witness had changed. In one case, after seeing the television broadcast of the discovery of a teenage girl's remains 12 years after she had disappeared, the defendant's former wife came forward to report the murder of a young female by her then husband. No physical evidence or weapon linked the man to the crime; the case revolved around the ex-wife's testimony.

As melodramatic as it might seem, authorities have solved a few cases when defendants wanted to talk about crimes. One inmate contacted detectives

to "get something off his chest." He had become involved in religion and wanted to confess to a murder. Another inmate corresponded with a judge to discuss a killing that he had witnessed. When detectives came to question him, he refused to talk, but they managed to obtain a blood sample. DNA analysis matched one of the two defendants in the case. The other defendant, in another prison, talked about the crime because he assumed that his partner already had confessed.

In a number of cold cases, detectives continued to submit fingerprints or samples for DNA analysis until advances in technology secured a match. In 2003, authorities tried a man for the 1981 sexual assault and murder of a woman. They first had prosecuted in 1996 when DNA analysis conducted on swabs taken at the victim's autopsy revealed a ratio of 1 to 10,000 chances that the DNA could have come from someone other than the subject. In 2003, however, technicians reanalyzed the DNA and the ratio increased to 1 in 100 billion, which led to the man's conviction.

## Conclusion

Cold case homicides have caught the imagination of the public, and families of these victims have had their hopes raised that the murderers of their loved ones still will come

to trial. Many jurisdictions have created specialized cold case homicide units.

A year after implementation, the Charlotte-Mecklenburg Police Department has a cold case unit still undergoing revisions. It has refined the selection process of cases, begun the analysis of physical

***Unlike many television portrayals, cold case homicides are not easily solved or prosecuted.***

evidence on selected ones, and prepared others for the district attorney. The unit continues to grapple with some issues, including physical evidence and prosecution challenges, but remains determined to forge ahead in the pursuit of justice for the victims and their families. One man still waiting for resolution of his brother's murder in 1974 summed up the feelings of many by saying, "As long as I know it's not shelved and forgotten forever." ♦

## Endnotes

<sup>1</sup> M. Manware, "Unsolved Killings Split Police," *Charlotte Observer*, November 29, 2002, sec. 1A, p. 4.

<sup>2</sup> For additional information, see Charles L. Regini, "The Cold Case Concept," *FBI Law Enforcement Bulletin*, August 1997, 1-6; and James Markey, "New Technology and Old Police Work Solve Cold Sex Crimes," *FBI Law Enforcement Bulletin*, September 2003, 1-5.

<sup>3</sup> For an overview of cold case squads, see Ryan Turner and Rachel Kosa, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, and the Police Executive Research Forum, *Cold Case Squads: Leaving No Stone Unturned*, NCJ 199781 (Washington, DC, July 2003).

<sup>4</sup> Although the media has publicized homicide cold case units as a new concept, they are not. Many law enforcement agencies began adding cold case investigators more than 5 years ago as advancements in DNA analysis and other forensic technology progressed. Perhaps, the idea of using volunteers with past law enforcement experience in conjunction with veteran investigators constitutes a new phenomenon. M. Manware, "Review Team Delves into Old Homicide Cases," *Charlotte Observer*, June 23, 2003, sec. 1B, p. 6; and T. Tizon, "Cold Case Cowboys Ride Again: A Volunteer Squad of Retired Police Officers in Oregon," *Los Angeles Times*, January 29, 2004, sec. 1A, p. 4.

<sup>5</sup> Quite often, specific documents, such as medical examiner's reports and evidence analysis results, are not in the case folders but housed in archives. Currently, college interns are assessing the case files for missing information and ensuring that they are complete before the volunteers receive them for review.

<sup>6</sup> For additional information, see John E. Smialek, Charlotte Word, and Arthur E. Westveer, "The Microscopic Slide: A Potential DNA Reservoir," *FBI Law Enforcement Bulletin*, November 2000, 18-22; and Alice R. Isenberg, "Forensic Mitochondrial DNA Analysis: A Different Crime-Solving Tool," *FBI Law Enforcement Bulletin*, August 2002, 16-22.

**Treating Police Stress: The Work and the Words of Peer Counselors** by John M. Madonna, Jr., and Richard E. Kelly, Charles C. Thomas Publisher, Springfield, Illinois, 2002.

In most books discussing law enforcement stress, the authors draw on a theoretical basis to begin their discussions. Yet, too frequently, these concepts may not have an easy application in the real-life world of policing. In a number of his publications, Dr. Jim Reese has broken that mold and used the words of practitioners to define and focus an approach to stress in the practical world. Similarly, Drs. Madonna and Kelly explore the world of peer counselors from a counselor's point of view and provide a real-life understanding of the usefulness of such programs in law enforcement agencies.

Even today, the world of law enforcement is an environment in which personal problems are difficult to admit, and the idea of reaching out to a formal mental health practitioner remains alien to a number of officers. Peer counselors—those within the profession with training, credibility, and a deep understanding of the role, responsibilities, and problems of law enforcement officers—can serve as a bridge from the troubles of law enforcement officers to the solutions of their problems. Where early intervention is the key to success, peer counselors are able to react, respond, and mobilize the resources necessary to save the lives of law enforcement officers.

*Treating Police Stress: The Work and the Words of Peer Counselors* is a "how-to" guide to establishing and utilizing a peer counseling program. It presents a variety of successful strategies and tactics, as well as some not so successful ones. More important, it draws from the words and experiences of those actually charged with providing this invaluable

service to law enforcement officers in time of need.

Two points the authors make are particularly compelling. First, stress intervention by peer counselors can have a dramatic effect on the successful resolution of problems experienced by law enforcement officers. However, the selection and preparation of the right individuals to fill such positions prove paramount to program success. Only those who have credibility with other officers, the ability to express empathy and maintain confidentiality, and a sincere willingness to serve their law enforcement colleagues and their families need apply.

Second, commitment for a program that is more than just "window dressing" must radiate from the agency's chief executive and be apparent throughout the chain of command. In the authors' experience, programs have failed because key agency leadership neglected to properly staff, fund, or support these vital efforts.

Is a peer counselor program a wise and cost-effective investment for a law enforcement agency and an absolute necessity for the well-being of its personnel? Will officers make use of its services? An example that the authors cite says it best. When an officer admitted to an assembled group of his peers that he had gone to the agency's stress unit, "he was expecting scorn, suspicion of his ability to be trusted, or condescension at best...silence followed...then some began to resume their conversation as if nothing had been said. Still processing what was happening, the officer heard the only direct comment made, 'What took you so long?'"

Reviewed by  
James D. Sewell, Ph.D.  
Assistant Commissioner  
Florida Department of Law Enforcement

# ***Suicide by Cop***

## ***Defining a Devastating Dilemma***

By ANTHONY J. PINIZZOTTO, Ph.D., EDWARD F. DAVIS, M.S., and CHARLES E. MILLER III



**W**hat is suicide by cop? Why is it so difficult to measure the extent of this tragic problem on a national basis? What can the law enforcement profession do to reduce occurrences and safeguard its members, as well as the public?

To help answer these questions, an examination of law enforcement crime reporting practices prior to the development of the Uniform Crime Reporting (UCR) Program can provide a starting point. In 1927, the International Association of Chiefs of Police (IACP) established the UCR Program to enable the law enforcement community to understand and quantify the nature and extent of

crime in the United States. For example, what one state reported as an automobile burglary, another recorded as a larceny from an automobile. To remedy this, the IACP developed a system that included standardized definitions of offenses for law enforcement agencies to use when reporting crime statistics. Today, the UCR Program functions under the management of the FBI with support from the IACP and the National Sheriff's Association.

### **COLLECTION CONUNDRUM**

Suicide by cop is not the first phenomenon to arise requiring an amendment to this national reporting process. In

the 1980s, law enforcement agencies throughout the United States began to collect information regarding crimes motivated by hate or bias. Once again, the definition of a hate- or bias-motivated crime lacked uniformity when varying jurisdictions attempted to measure the frequency of these acts. In 1990, the UCR Program expanded to include the category of hate crimes. A standardized definition of a hate crime came about through the cooperation of local, state, and federal law enforcement agencies, along with various human interest groups. A model policy then developed that included recommendations for law enforcement agencies to consider when

investigating hate crime and submitting statistics to the UCR Program, which began compiling and distributing the data to law enforcement via an annual publication. This marked the first time that the program asked law enforcement agencies to examine offenders' motivations for committing a crime.

Although the UCR Program does not capture information on suicides, such reports usually exist at the local law enforcement level. The American Association of Suicidology provides statistics regarding suicidal behavior on a national level. Its most recent publication revealed that 30,622 people committed suicide in 2001.<sup>1</sup> This equates to one person committing suicide every 17 minutes. Males kill themselves

four times more frequently than females. Suicide ranks 11th as the cause of death in the United States, while homicide ranks 13th. Because of no official national data on suicide attempts, the association has developed a formula indicating that 25 attempts occur for every suicide death in the nation. Applying this formula revealed the staggering statistic of over 765,550 attempted suicides in 2001.

A 1998 report by the American College of Emergency Physicians examined all deputy-involved shootings that occurred in the Los Angeles County, California, Sheriff's Department.<sup>2</sup> The findings revealed that suicide-by-cop incidents accounted for 11 percent of all deputy-involved

shootings and 13 percent of all deputy-involved justifiable homicides. The report concluded that suicide by cop constitutes an actual form of suicide and defined it as "an incident where a suicidal individual intentionally engages in life-threatening and criminal behavior with a lethal weapon or what appears to be a lethal weapon toward law enforcement officers or civilians specifically to provoke officers to shoot the suicidal individual in self-defense or to protect civilians."

A strong relationship may exist between incidents where subjects killed or seriously assaulted law enforcement officers and those where offenders actually intended to commit suicide by deliberately compelling officers to use deadly force.



*Dr. Pinizzotto is the senior scientist and clinical forensic psychologist in the Behavioral Science Unit at the FBI Academy.*



*Mr. Davis, a retired police lieutenant, is an instructor in the Behavioral Science Unit at the FBI Academy.*



*Mr. Miller, a retired police captain, is the Law Enforcement Officers Killed and Assaulted program coordinator and an instructor in the FBI's Criminal Justice Information Services Division.*

Although complete statistics are unavailable, the limited ones that do exist beg further study. UCR data show that from 1991 to 2000, 62 offenders who feloniously killed a law enforcement officer committed suicide during the same incident. However, no national statistics have been collected on the number of individuals who committed suicide *subsequent* to an incident where an officer was killed or assaulted. And, of the 62 cases noted, no data existed that conclusively determined if any of the offenders attacked the officers in an attempt to commit suicide by cop.

Additionally, UCR statistics revealed that law enforcement officers justifiably killed 339 offenders in 2002.<sup>3</sup> The program defines justifiable homicide by a law enforcement officer as “the killing of a felon in the line of duty.”<sup>4</sup> In these 339 cases, did any of the individuals have the intention of using the officer as a means of committing suicide?

## UNIFORM DEFINITION

Before 1990, the term *suicide by cop* was not commonly used by the public or the media in reporting law enforcement incidents involving the use of deadly force. Today, however, law enforcement personnel, the media, and the general public frequently employ it. The media has publicized these

occurrences, and numerous articles have appeared about them. But, a clear and uniformly accepted definition has yet to surface. Therefore, just as with hate crime, the adoption of a national definition of suicide by cop, criteria to determine what constitutes such acts, and a reporting mechanism to record

meant to kill the officer? Obviously, a situation of this nature needs a thorough investigation to arrive at an accurate determination. To respond effectively to inquiries by the general public and the media, law enforcement administrators must have the tools for defining and measuring the frequency of suicide-by-cop incidents.

For over 15 years, the authors have researched law enforcement’s use of deadly force. A portion of this research examined cases that possessed similar elements indicating a possible suicide-by-cop incident. From their research, the authors have developed a definition of suicide by cop based on UCR guidelines. They also have established the criteria for recognizing and reporting these incidents. Their definition of suicide by cop is “an act motivated in whole or in part by the offender’s desire to commit suicide that results in a justifiable homicide by a law enforcement officer.” In addition, to better understand the magnitude of the suicide-by-cop phenomenon, law enforcement agencies must examine, investigate, and collect data regarding attempted suicide-by-cop incidents. Therefore, the authors have defined an attempt as “an act motivated in whole or in part by the offender’s desire to commit suicide that was intended to result in the death of the offender,

***Whether an agency classifies an offense as a suicide by cop or attempted suicide by cop rests with the second tier of the investigative process....***

these incidents must occur to enable the law enforcement community to effectively address the devastation brought about by this phenomenon.

If an offender points an unloaded firearm at a law enforcement officer who, in turn, kills that person, what facts and circumstances must be present and reported to enable agencies to determine the death as a suicide by cop? Did the offender deliberately point a firearm at an officer knowing it was not loaded? Or, was it merely an oversight and the offender

## Devastating Consequences of Suicide by Cop

Unknown to the officer at the time of the shooting, the offender brandished an unloaded handgun. The officer saw the weapon and commanded the offender to drop it. The offender turned in the direction of the officer and drew his arm up from his side, pointing the weapon at the officer. Faced with this dangerous threat, the officer fired two shots from his weapon. The rounds took effect, and the offender fell to the ground and died. On-scene witnesses supported all of the actions by the offender and the officer.

When the media reported the incident, the stories stressed only the offender's weapon being unloaded and failed to describe the offender's behavior that made him appear to the officer as a clear and immediate danger. During the extended investigation and numerous media articles, the officer stated that he felt "let down by his department and 'villainized' by the media."

A complete, detailed, and expedient investigation of this case may have resulted in a more timely and accurate account. Most important, it may have prevented the inappropriate and harmful effects experienced by the officer.

but did not. This includes both the use of deadly force and the use of less lethal force by law enforcement."

### INVESTIGATIVE PROCEDURES

As with any other serious crime, law enforcement agencies must thoroughly investigate incidents suspected of meeting the criteria for a suicide by cop or attempted suicide by cop. A two-tier procedure can help agencies identify and investigate these incidents.

1) Reporting Procedure: The officer on the scene of an apparent suicide-by-cop or attempted suicide-by-cop incident forms an initial determination that the motive of suicide is suspected and notes this on the original report.

2) Classifying Procedure: An officer or unit with expertise in the use of deadly force incidents renders the final determination of whether a suicide-by-cop or attempted suicide-by-cop incident has occurred *only* after a full investigation is completed and the facts and circumstances have revealed the probable motivation of the offender.

### Responding Officer's Responsibilities

In addition to complying with established department directives regarding the use of deadly force by law enforcement personnel, the responding officer should include in the initial offense report specific elements possibly present at the scene. These involve—

- statements made by the offender, including the names of witnesses to the statements;
- type of weapon possessed by the offender;
- offender's specific actions that resulted in the use of deadly force;
- conduct that the officer deemed bizarre or inappropriate on the part of the offender; and
- circumstances indicating that the offender's motivation may have been suicide.

In many cases, the offender's motivation may not be readily apparent in the initial reporting of the incident, thereby requiring follow-up investigation. Most important, some crime scenes may not contain any of these elements,

and the motivation of the offender will remain unknown.

### Second-Tier Responsibilities

Whether an agency classifies an offense as a suicide by cop or attempted suicide by cop rests with the second tier of the investigative process, the final decision-making body. Therefore, those making the ultimate determination must have special training in deadly force matters and suicidal behaviors. Whereas the responding officer identifies any indications that the offense was motivated by the offender's *desire* to commit suicide, the second-tier investigating officer or unit must sift carefully through the facts and circumstances using stringent criteria to determine if the incident probably was motivated by the offender's *will* to commit suicide, including, but not limited to, such items as—

- notes or recent correspondence, such as e-mails and other computer files, left at the scene, in the residence of the offender, or at any other place the offender frequented;
- detailed and verbatim statements from family members, friends, and associates, as well as follow-up statements of witnesses;
- other pertinent investigative facts or evidence, including that from in-car or security cameras;

- forensic evidence pertinent to the investigation (e.g., If the offender used a firearm, was it loaded with proper ammunition or capable of firing ammunition?); and
- personal history of the offender, including medical and psychiatric information; credit reports; insurance policies; employment records; history of significant relationships; prior suicides of family members;

***No single behavior or piece of physical evidence usually will suffice to establish the motive of the offender.***

prior attempted suicides, particularly attempts that involved confrontations with law enforcement officers; and criminal history, including sentencing information, presentence reports, psychiatric evaluations, and prison records.

In addition to recording specific acts committed by the offender, second-tier investigations also should focus on the subject's motivation for committing them. The listed criteria

include indicators that can help establish motivations and behavior patterns of the offender.

Stress and depression often are precursors to suicide. Their causes can vary from person to person; however, stress and depression frequently relate to work, financial issues, changes in relationships, and patterns of living. With this in mind, second-tier investigating officers should include a full retrospective of the offender's background and behavior, as well as information obtained from relatives, friends, associates, coworkers, neighbors, and police records. Each possesses unique perspectives and different information that may shed some light on the potential motive of the offender. Information should include potentially relevant statements made by the offender, such as "I can't stand it anymore"; "You'll be better off without me"; "I won't see you anymore"; "I want to die"; "I want to be with (a deceased loved one)"; and "I can't live without drugs." Other potential indicators include additional verbalized intentions indicating an interest in self-destruction; longings or interest in death; prior attempted suicides; prior medical or psychiatric care; death of a spouse, significant other, or friend; substantial loss of funds or outstanding and pressing debts; divorce; pending or actual loss of a job, including

retirement; imminent arrest of the individual or of a close friend or associate; and health problems. Because individuals sometimes commit suicide on or around anniversary dates, officers also should review what transpired in the offender's life the year before the incident. Finally, they should ask all interviewees, "What else should I have asked you to better understand the individual?"

In some instances, insufficient facts and circumstances will fail to conclusively corroborate or refute the suicidal motivation of the offender, thereby not substantiating a motivation of suicide as the cause for the offender's death. In these cases, second-tier investigating officers should consider the incident as unsubstantiated and not classify it as a suicide by cop or attempted suicide by cop. No single behavior or piece of physical evidence usually will suffice to establish the motive of the offender. Instead, investigating officers must take into account the totality of the physical evidence and behavioral indicators collectively to obtain an accurate assessment.

## CASE STUDIES

In a previous study by the authors, 12 offenders reported making an attempt to commit suicide prior to their assaulting or attempting to assault a law

enforcement officer.<sup>5</sup> In their current study, 21 offenders indicated that they had contemplated suicide, and 10 offenders advised that they actually had attempted suicide prior to the incident.<sup>6</sup> Six offenders reported that they had attempted to force a law enforcement officer to kill them at some point during the incident. A thorough review of the facts and circumstances surrounding three of these

classification as attempted suicide-by-cop incidents.

### Case #1: The Officer's Perspective

Two officers were dispatched to an apartment building in response to a woman yelling for help. Upon arriving at the location, they observed a female standing on the front steps. She waved them inside and then entered the apartment, leaving the door open behind her. As the officers approached the doorway, they could hear a man yelling and then saw him standing in the kitchen area. As the male observed the officers enter the apartment, he produced a large butcher knife. He held the blade of the knife firmly against his stomach with both hands and appeared highly intoxicated, agitated, and angry. The officers drew their service weapons and ordered the man to put down the knife. The offender responded by stating, "[Expletive] you, kill me!" The officers gave several more verbal commands, which the man ignored. He turned toward the kitchen counter, put the handle of the knife against it with the blade touching his stomach, and grabbed the counter with both hands as if to thrust himself fully onto the knife. The officers attempted to talk with the offender who responded by turning around and slicing himself severely on



alleged attempted suicide-by-cop cases follows wherein the offender survived. This examination should provide a better understanding of these acts as seen through the eyes of the offender, as well as the officer. Each discloses specific behaviors exhibited by the offender and the interpretation of them by the officer. The cases also include the facts and circumstances provided by the second-tier or follow-up investigation, along with the determinations made regarding their

his forearm, bleeding profusely. The officers repeatedly asked him to drop the knife. One officer aimed his service weapon at the offender while the other pointed a chemical mace container at him. Still armed with the knife, the offender advanced closer to the officers. This caused the officers to retreat to a position where they attempted to use the kitchen door frame as cover.

As this was occurring, a backup unit arrived on the scene. The offender repeatedly told the officers to shoot him while continually ignoring commands to drop the knife. From a distance of approximately 12 feet, he raised the knife in a threatening manner and charged the officers. One officer fired two .45-caliber rounds from his service weapon. Both struck the offender in the chest but seemed not to have any effect, except to make him angrier. The officer then fired two more rounds, at which point his service weapon jammed. One of these rounds struck the offender in his hand, passing through it and lodging in his groin. The second round hit him in the chest. The offender continued to charge both officers

as they retreated down the hallway and out the front door. As the offender arrived at the front door, he received another .45-caliber gunshot wound to the groin fired by the second officer. He dropped the knife and backed up against a wall inside the doorway, but remained on his feet. The officers entered the premises, removed the knife, took the offender into custody, and called for an ambulance. The offender was transported to the hospital and

position where I had to do something like this. I was upset with the fact that this guy kept pushing the issue and had made the decision himself, where I didn't have a decision."

### Case #1: The Offender's Perspective

In the morning, the offender had a serious argument with his wife, one that would only escalate if he remained in the apartment. The previous day he had a disagreement with several friends that resulted in a fistfight. He stated that "the argument with my wife increased the pressure on me." He left the apartment and went to several bars. He drank liquor for approximately 7 hours and got extremely intoxicated. A relative helped him home where he and his wife continued to argue.

While standing in the kitchen, he observed two police officers enter the apartment. The mere presence of the officers further enraged him. When asked later if he wanted the officers to end his life for him, the offender said, "Quickly,

### Potential Indicators of Suicide

- Verbalized intentions of self-destruction
- Longings or interest in death
- Prior attempted suicides
- Prior medical or psychiatric care
- Death of a spouse, significant other, or friend
- Substantial loss of funds or outstanding and pressing debts
- Divorce
- Pending or actual loss of a job, including retirement
- Imminent arrest of the individual or a close friend/associate
- Health problems

survived the incident. The officer who fired the initial four rounds stated, "It was my life or his, and it became his. I was upset that this guy put us in a

I figured when they seen the knife that would have been enough. It would have been all over. But, it didn't end up that way." When asked about

specific thoughts during the confrontation with the officers, the offender stated, "I never thought about suicide. Never in my wildest years. I'd take a beating before I'd commit suicide. But, at the time and at that point, the pressure was so great; the common reality wasn't there anymore. It was gone. I didn't care. I didn't care about nothing that was standing before me. I just wanted out."

After advancing on the police officers, he was shot five times. Three bullets struck him in the chest, one in the groin, and one passed through his hand and struck him in the groin. The offender stated that the first several rounds that struck him "felt like bee stings" and only tended to enrage him. But, by the time he reached the front door of the apartment building, he became incapacitated. While being transported to the hospital, the offender told emergency medical technicians, "Let me die; don't try to save me." He pled guilty to several counts of assault on a police officer while armed and was sentenced to a short prison term.

### Case #1: Second-Tier Investigation

The facts and circumstances of the incident were corroborated by interviewing the offender, witnesses, and family members. The investigation revealed the following points:

- The offender possessed a weapon capable of inflicting serious bodily injury or death.
- He used the weapon to seriously injure himself.
- He attacked the officers with the weapon.
- During the attack, he demanded that the officers kill him.

***Suicide-by-cop incidents are painful and damaging experiences for the surviving families, the communities, and all law enforcement professionals.***

- He told emergency medical technicians that he wanted to die.
- Interviewed by investigators at a later date, he confirmed that he was attempting to commit suicide.

Investigation of this incident demonstrated that the elements of an attempted suicide by cop were present. Therefore, the case would merit the appropriate classification as an attempted suicide by cop.

### Case #2: The Officer's Perspective

An officer learned that an offender wanted on a misdemeanor warrant for writing bad checks was at the storage lot of a private towing company. The officer responded to the location, properly identified the offender, and placed him under arrest. As the officer attempted to handcuff the offender, a struggle ensued. The offender gained possession of the officer's service weapon and immediately fired one round, which struck the officer in the chest. The officer attempted to flee the area, but the offender fired four more times, wounding him in the thigh, arm, leg, and back. The officer fell to the ground.

The offender ran to the front of the premises where he previously had parked a motor vehicle occupied by his girlfriend and her small child. As the offender neared the vehicle, a second police officer, with his service weapon drawn, came around the corner of the building. The officer repeatedly told the offender to drop his gun. The offender responded by placing it in his mouth. Shortly thereafter, the offender removed the gun from his mouth and pointed it at the officer who continued to repeat his earlier commands. Upon hearing numerous sirens converging on the crime scene, the offender

dropped the handgun and was arrested without further incident. The first officer was transported to the hospital and eventually recovered from his wounds.

### Case #2: The Offender's Perspective

The offender went to the storage lot to retrieve his motor vehicle when he was approached by the officer. He felt relieved when the officer advised him that his arrest concerned a misdemeanor because he believed that authorities in another jurisdiction wanted him for a felony parole violation. He willingly went along with the officer because he assumed that he could post bond for the lesser offense. He stated that he had no intention of harming the officer, but, when he asked the officer to let him go to the front of the premises and tell his girlfriend where he would be taken, the officer refused. This made him angry because he had been under a lot of pressure. He recently had lost his job and had fallen behind on his bills. As a result, he had moved out of his apartment and in with a friend. He had incurred a lot of debt, and his car had been repossessed. Further, he had violated his probation by leaving the jurisdiction where he had been convicted. He left the area believing that his parole was going to be revoked for failing

to make restitution as ordered by the court. His financial problems had created a "snowball effect," and he felt like he was in a "no-win" situation. He said that the arresting officer seemed "not to care about me," which caused him to become very angry.

After taking the officer's weapon and shooting him five times, the offender attempted to flee. He intended to escape the shooting scene, but encountered

© Stephanie Greer



the second officer who pointed a handgun in his direction and began yelling commands. The offender ignored the officer's command to drop the weapon, describing the confrontation as a "stand off" and stating that he felt the officer would shoot him if he complied. At that point, the offender knew that he could not escape the scene. He was very confused and later said, "I knew the officer out back was going to die. I thought I have nothing to live for now. I don't want to spend the rest of my life

in jail or the death penalty. I've thrown everything away that I've tried so hard to build, and I put the gun in my mouth. And, I was going to commit suicide at that point." The offender realized that his girlfriend's small child could see him. The child and her mother were both crying and asking him not to commit suicide. The offender stated that he could not bring himself to do it with a small child looking on. The offender removed the gun from his mouth and pointed it at the police officer who still was telling him to drop the weapon. The offender said, "I was convinced that as soon as I went to do that, I would be shot. But, to this day, he didn't shoot me, and I don't know why." The offender started walking backward when he heard numerous sirens closing in on the scene. He stated that he felt an escape would be impossible so he laid his handgun on the ground and surrendered.

### Case #2: Second-Tier Investigation

The facts and circumstances of the incident were corroborated by interviewing the offender and witnesses. The investigation revealed the following information:

- The offender possessed a deadly weapon capable of inflicting serious bodily injury or death.

- He used the weapon to attempt to kill a police officer and flee the scene.
- While attempting to flee, the offender was confronted by another police officer.
- The offender stated that he wanted to end his life. He placed the gun in his mouth, but, before he could squeeze the trigger, his girlfriend convinced him not to commit the act.
- He reported that he was unable to take his own life in the presence of the child and opted to point a loaded handgun at the police officer. These actions were consistent with an individual who wanted to commit suicide.
- When questioned, the offender said that he wanted the police officer to kill him at that moment. This was a very quick decision made by the offender when his hopes of effecting an escape had decreased greatly.
- When the offender's chance of escape further diminished by the approach of additional police units, he just as quickly changed his mind and decided that he wanted to live. He then surrendered.

Evidence of ambivalence often occurs in both completed and attempted suicides. "Hesitation cuts," surface wounds, and

ingesting insufficient volumes of medication or poison all commonly occur. In this case, both the offender's decision to commit suicide by cop and his desire to live took place within an extremely brief period of time, each triggered by the circumstances of a quickly unfolding series of events.

“

***In addition to recording specific acts committed by the offender, second-tier investigations also should focus on the subject's motivation for committing them.***

”

This represented a complex case. The offender initially considered only fleeing from the first officer. However, when escape became impossible, he wanted to end his life. Without statements from both the offender and his girlfriend, investigators could not have determined or even recognized that this would constitute a properly classified attempted suicide-by-cop incident.

#### **Case #3: The Officer's Perspective**

Two officers effected a traffic stop of an offender

speeding and operating a vehicle in a reckless manner. One of the officers knew the offender as he had arrested him several months before on another traffic violation. An NCIC check revealed that the offender was wanted on a felony warrant in another jurisdiction. The officers searched the offender, handcuffed him behind his back, and placed him in a transport car equipped with a cage. While in the prisoner compartment, the offender managed to slip one leg through the handcuffs and was straddling them with one hand in front of his body and the other in the rear. Having kept the offender under direct observation, the arresting officer called for a patrol wagon.

Upon arrival of the wagon, officers placed leg shackles on the offender and once again handcuffed him behind his back. They transported him to a central cell block facility where numerous other transport vehicles and police officers were present. After securing his gun belt containing his service weapon in the trunk of his police vehicle as required by regulation, the arresting officer opened the rear door of the patrol wagon. The offender asked the officer a question regarding extradition procedures. As the officer finished answering the question, the offender produced a .22-caliber

revolver. The offender immediately fired the weapon, which struck the officer between the eyes. The officer managed to maintain his balance and attempted to wrestle the handgun away from the offender. During the struggle, the offender shot the officer once more in the hand. The officer experienced difficulty seeing because blood from his forehead wound dripped into his eyes. As the officer attempted to retreat and seek cover, the offender fired an additional round, which struck him in the back. The officer became disoriented and fell to the pavement. The offender then exited the patrol wagon, and multiple police officers fired at him, with no rounds taking effect. The offender retreated to the wagon where he remained for several minutes. He eventually emerged, laid his weapon on the ground, and surrendered without further incident. The wounded officer was transported to the hospital and recovered from his injuries.

### **Case #3: The Offender's Perspective**

On the night of the incident, the offender intended to commit suicide because he was depressed. The main cause for his depression was an abortion his girlfriend recently underwent. He believed that he was the father of the child, and the

abortion made him feel like a murderer. After illegally obtaining a handgun, he drove to a public park to kill himself. On the way to the park, the officers stopped and arrested him. After being placed in the back of the cage car, he slipped his legs through the handcuffs. At that point, he intended to remove the handgun concealed in the front of his pants and kill himself. The arresting officer noticed the handcuff maneuver, advised the

his hands in front of him. He removed the handgun from his pants and attempted to kill himself by placing the handgun under his chin and pulling the trigger. He pulled the trigger of the handgun three times and each time the handgun failed to fire. After arriving at the cell block facility, the arresting officer opened the rear door of the wagon. The offender raised the handgun and aimed for the officer's shoulder. He did this hoping the officer would shoot him. The officer moved as the weapon discharged, resulting in the round striking the officer in the forehead. The offender did not recall firing two additional shots. The officer fell to the pavement, and the offender approached him with a handkerchief in one hand and the handgun in the other. He intended to render aid to the officer. He stated, "Like I said, once I realized what was going on, I kind of snapped back into reality and when I realized this man was hurt, and I tried to render aid, I started coming to my senses more or less, and that's when I discovered that I was holding a handgun." Other officers began to fire multiple rounds at the offender, with none taking effect. He reentered the wagon for a brief period of time and then exited it, laid the handgun on the ground, and was taken into custody.



offender to stop, and continued to directly observe him until the police wagon arrived. When that happened, officers shackled his legs and handcuffed his hands behind his back. Then, they transported him to a central cell block facility where he was to be detained.

While en route, the offender again slipped his legs through the handcuffs and positioned

### Case #3: Second-Tier Investigation

The facts and circumstances of the incident were corroborated by interviewing the offender, the officer, and witnesses. The investigation revealed the following aspects:

- At his trial, the offender's lawyers initially entered a plea of not guilty by reason of insanity. Subsequent examination of the offender by several psychiatrists determined that the offender was mentally competent to stand trial.
- The offender changed his plea to not guilty. He was tried, convicted, and sentenced to a lengthy prison term.
- The offender did not take the witness stand in his own defense. A suicide-by-cop defense was not asserted.
- Several years after the conviction, the offender alleged an attempted suicide by cop had taken place.
- An examination of the forensic evidence reports indicated that the offender was armed with a 5-shot revolver. The report noted that the offender fired three rounds from the revolver that discharged. The offender then attempted to fire two additional rounds that failed to discharge. It was at

that point that he surrendered the weapon.

- Subsequent investigation and examination of statements given by the offender to other inmates revealed the offender's true motive for his criminal acts. After shooting the officer, it was the offender's intent to commandeer a police vehicle and effect an escape.

***...law enforcement administrators must have the tools for defining and measuring the frequency of suicide-by-cop incidents.***

Other than the offender's claim that he was attempting to commit suicide, no facts or circumstances corroborated his assertion. This incident would not meet the necessary elements to be classified as an attempted suicide by cop.

### CONCLUSION

Presently, the depth or breadth of the suicide-by-cop problem remains unknown. Two reasons for this exist:

1) the lack of both a clear definition and established reporting procedures and 2) the immediate removal of suicide attempts from the criminal process and placement within the mental health arena, causing the law enforcement investigation to cease and, thus, preventing an agency from identifying a potential threat to its officers, their families, or other members of the community. The recognition and proper classification of these incidents will raise the awareness of the law enforcement community to develop the necessary tools to deal appropriately with issues of training, response, media involvement, and officer safety.

As with all crime and incident data, this information can serve individual departments and agencies by clearly identifying these situations; reporting them to their local communities; and responding to the training, tactical, and emotional needs of the officers involved. Additionally, incorporating the data into the Uniform Crime Reporting Program would provide reliable statistics for use by law enforcement personnel, criminologists, sociologists, mental health practitioners, legislators, municipal planners, members of the media, and the general public.

Suicide-by-cop incidents are painful and damaging experiences for the surviving families,

the communities, and all law enforcement professionals. Accurate and timely reporting of the true facts of such incidents cannot alter the reality of the tragedies, but may lessen some degree of pain for the innocent survivors. ♦

#### Endnotes

<sup>1</sup> American Association of Suicidology, *Suicide Data Page: 2001*, prepared by John L. McIntosh, September 26, 2003;

retrieved on August 27, 2004, from <http://www.suicidology.org/associations/1045/files/2001/datapg.pdf>.

<sup>2</sup> H. Range Huston, M.D., Diedre Anglin, M.D., et al, American College of Emergency Physicians, "Suicide By Cop," *Annals of Emergency Medicine* 32, no. 6 (December 1998).

<sup>3</sup> U.S. Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 2002* (Washington, DC, 2003), 28.

<sup>4</sup> Ibid.

<sup>5</sup> Anthony J. Pinizzotto, Edward F. Davis, and Charles E. Miller III, U.S. Department of Justice, Federal Bureau of

Investigation, *In the Line of Fire* (Washington, DC, 1997).

<sup>6</sup> Anthony J. Pinizzotto, Edward F. Davis, and Charles E. Miller III, U.S. Department of Justice, Federal Bureau of Investigation, *Violent Encounters: Felonious Assaults on America's Law Enforcement Officers* (Washington, DC, publication pending).

*This article is an excerpt from a 5-year study on officer safety that the authors recently completed. Violent Encounters: Felonious Assaults on America's Law Enforcement Officers will be available in the near future.*

## The Bulletin Honors

The Palm Springs, California, Police Department presents its memorial, "Help Is on Its Way," erected in honor of two of the agency's officers killed in the line of duty—one by gunshot during an armed robbery and the other by wounds sustained in an automobile accident. Located in front of the department, the monument features a bronze statue of an officer leaning over and providing aid to a fallen comrade next to the door of a patrol vehicle. The grasping of arms between the two officers symbolizes the close fellowship among law enforcement personnel—that no matter what, officers are there for one another.



### **Blood Spatter Interpretation at Crime and Accident Scenes** *A Basic Approach*

By Louis L. Akin

Many new technologies can help law enforcement personnel solve crimes and apprehend offenders. While specialists in these fields must keep abreast of new developments, law enforcement personnel do not have to become experts to take advantage of the innovations or to apply the scientific methods. For example, once, albeit a long time ago, authorities often ignored fingerprint evidence at crime scenes because they either did not understand its value or did not have skilled personnel to process it. As specialists became available, however, law enforcement agencies began collecting the evidence. Today, it would prove a misfeasance for an officer or crime scene technician to ignore fingerprints at the scene of a violent crime.

Blood spatter analysis requires the same expert interpretation as fingerprints. Yet, at crime scenes today, authorities often treat blood stains the same as their counterparts did fingerprints a century ago: not routinely measuring or properly photographing them. In many trials, the story composed by the blood that could help law enforcement understand more about what happened during a violent attack or prove a defendant's version of the incident improbable or impossible never gets told.

In the future, resident blood spatter analysts may become as common as fingerprint experts in law enforcement agencies; however, the lack of these specialists in no way should preclude obtaining vital blood spatter evidence at crime scenes. Officers or technicians do not have to interpret the blood spatter but only measure it, record their findings, and photograph the stain so experts can analyze it later.

#### **EVIDENCE VALUE**

Recording blood spatter evidence requires little training. Officers and technicians do not have to learn the trigonometric formulas and calculations involved in interpretation. Measurement training does not require weeks of classroom lectures and months of on-the-job experience. Instead, law enforcement personnel can learn the measurement and photography procedures in 2 days at police academy classes, college criminal justice courses, or in-service seminars.

How much knowledge do officers and crime scene technicians need to preserve blood spatter evidence? First and foremost, they must recognize the importance of the evidence—equal to that of fingerprints, shell casings, bullet holes, or murder weapons. Next, they need to understand that blood spatter indicates the direction from which it came. Then, they must learn how to measure the length and width of a single blood drop, how to tell the direction of travel (visible with the naked eye), and how to find the distance from the drop to the point from which the blood came (also visible with the naked eye). Finally, they need to record those measurements. A form with columns can create a permanent record of the blood spatter evidence at a crime scene. These measurements and the photographs are all an expert requires to analyze the evidence at a later time.

A basic understanding of blood spatter analysis allows the first responding officer, crime scene technician, or detective to assist in correctly collecting and preserving blood stain data at the scene. The principles and procedures are not complicated. The interpretation of blood spatter patterns at crime scenes may reveal critically important information, such as the positions of the victim, assailant, and objects at the scene; the type of weapon used to cause the spatter; the minimum number of blows, shots, or stabs that occurred; and the movement and direction of the victim and assailant after bloodshed began. It also may support or contradict statements given by witnesses.<sup>1</sup> The analyst may

use blood spatter interpretation to determine what events occurred; when and in what sequence they occurred; who was or was not present; and what did *not* occur.<sup>2</sup>

Officers or crime technicians can record the measurements of the stains needed and leave it to the experts to interpret them. However, officers and technicians should have a basic idea of what the blood spatter means, including—

- an understanding of the three classifications of blood spatter velocity and what they indicate;
- how to tell which way a drop was traveling;
- how to measure the length and width of a stain;

- how to measure from the stain to the point of convergence; and
- how to properly photograph blood stains.

## VELOCITIES OF BLOOD SPATTER

The velocity of the blood spatter when it strikes a surface is, within certain limitations, a strong and reasonably reliable indicator of the speed of the force that set the blood in motion in the first place. The classification of the velocity (whether high, medium, or low) is that of the initial force causing the blood to move, rather than the speed of the blood itself as it moves, and is measured in feet per second (fps). High velocity blood spatter, for instance, may have come from a gunshot wound inflicted by a bullet moving at 900 fps, whereas medium velocity may have resulted from a spouting artery or a blunt instrument striking the already bloody head or limb of a victim, and low velocity blood may have dripped from a wound or blood-soaked item.

### High Velocity

High velocity blood spatter is produced by an external force greater than 100 fps. The stains, sometimes referred to as a mist, tend to be less than 1 millimeter. Usually created by gunshots or explosives, high velocity patterns also may result from industrial machinery or even expired air, such as coughing or sneezing. In any case, the spatter tends to come from tiny drops of blood propelled into the air by an explosive force. High velocity droplets travel the shortest distance because of the resistance of the air against their small mass.

### Medium Velocity

An external force of greater than 5 fps but less than 25 fps causes medium blood spatter. The stains generally measure 1 to 3 millimeters. Blunt or sharp trauma, often

### Blood Spatter Evidence Form

Law enforcement personnel can use a form to record the distances of the point of convergence (POC) from two reference points, the same ones used to position other objects in the scene. They enter the width and length of the individual drops, as well as the distance to the POC, and then place the numbers of the photographs taken in the last column. They can use either metric or English measurement. In the sample below, for the point of convergence, the distance from reference point 1 equals 156 cm and from reference point 2 equals 350 cm.

Stain	Width (mm)	Length (mm)	Cm to POC	Photo Nos.
1	.5	1.0	24.0	11-15
2	.7	1.2	24.5	9, 16-18
3	.5	1.0	23.75	21-23
4	1.0	2.0	30.25	8, 26



*The high velocity gun shot wound leaves a mist-like appearance.*



*Low and medium velocity, slightly magnified.*



*Low velocity blood from the simulation of a bleeding person walking or running. Note that the blood drops "point" in the direction of travel.*

from knives, hatchets, clubs, fists, and arterial spurts, can produce such stains.

Most medium velocity stains found at crime and accident scenes form patterns created by blood flying from a body to a surface as a result of blunt or sharp trauma or the body colliding with rounded or edged surfaces. It may result from a punch, stabbing, or a series of blows or, in the case of an accident, the body striking surfaces inside or outside a vehicle. Any object that blocks the blood from falling on the surface where it would have landed, including the victim or the attacker's body or a piece of furniture moved to stage the scene, creates a void space in the stain.

### **Low Velocity**

Low velocity blood spatter is created by an external force less than 5 fps (normal gravity) with the stains generally 3 millimeters and larger. It usually results from blood dripping from a person walking or running or from a bloody weapon. Dripping blood often falls at a 90-degree angle and forms a 360-degree circumference stain when it hits a flat surface, depending, of course, on the texture of the surface. Investigators also may find low velocity blood spatter in the trail of an individual who is bleeding with larger pools of blood indicating where the person paused.

### **THE BLOOD DROP IN FLIGHT**

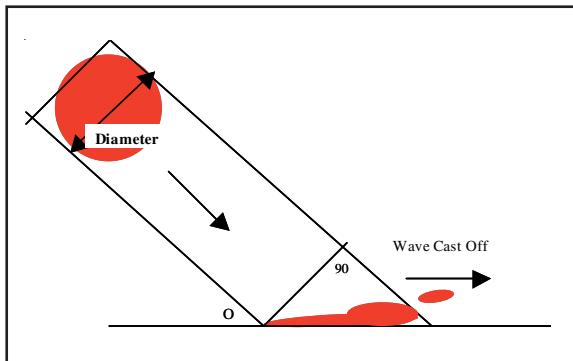
Experiments with blood have shown that a drop of blood tends to form into a sphere, rather than a teardrop, when in flight. Fresh blood is slightly more viscous than water and, like water, tends to hold the spherical shape in flight.

This spherical shape of blood in flight is important for the calculation of the angle of impact of blood spatter when it hits a surface. That angle determines the point from which the blood originated, called the point of origin (PO).

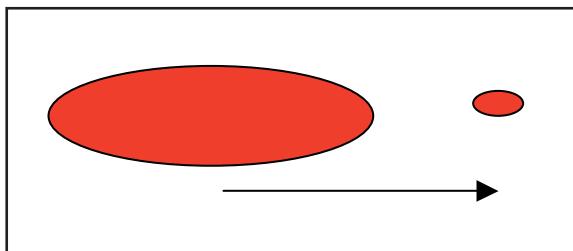
When a drop of blood strikes a flat surface, the diameter of the drop in flight will be the same as the width of the spatter on the surface. The length of the spatter will be longer, depending on the angle at which the drop hit.

### **POINT OF CONVERGENCE**

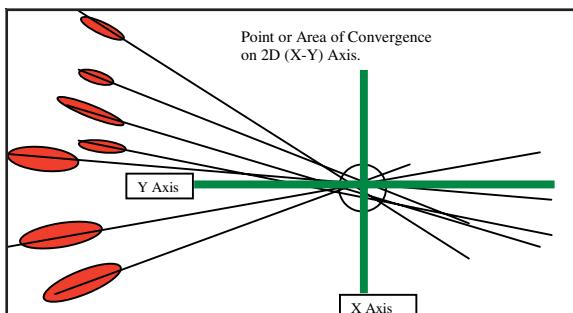
A fan-shaped blood pattern found on a floor as the result of a gunshot wound to the head can illustrate the point of convergence. When blood disperses in various directions from a wound, the blood drops tend to fan out. As the drops strike the floor, they elongate into oval shapes. An imaginary line drawn lengthwise through the middle of the oval shape will trace back to the area where the blood came from. Lines drawn through several of the blood spatters will cross at the point where the



**Figure 1.** Side view of blood drop in air, and then striking a flat surface.



**Figure 2.** View from above of blood spatter on floor showing direction of travel.



**Figure 3.** Lines through the central axes of the individual stains cross at the point of convergence.

person was standing, called the point of convergence. Somewhere above that point, the blood originated. If the victim was shot in the head, it may be 4 to 6 feet (roughly the height of an average person) above that point.

## CONCLUSION

Blood spatter analysis experts can develop important information from the patterns of blood at a crime scene. First-responding officers, crime scene technicians, and detectives can learn to photograph and preserve the measurements of blood spatter evidence at crime and accident scenes, gleaning a great deal of information without becoming experts themselves. If they properly photograph and accurately measure the length and width of the individual blood spatters and the distance from each spatter to the point of convergence, they can provide the expert analysts with data to make the necessary calculations and draw their conclusions. If agencies fail to obtain measurements and photographs, they risk losing critical information forever. Therefore, the collection of blood spatter evidence must be brought into today's world of technological advances and treated as important, but common, crime scene evidence easily preserved by law enforcement personnel who have acquired the necessary skills with a minimum of time and effort. ♦

### Endnotes

<sup>1</sup> Stuart H. James and William G. Eckert, *Interpretation of Bloodstain Evidence at Crime Scenes*, 2d ed. (Boca Raton, FL: CRC Press, 1999), 10-11.

<sup>2</sup> The list of precisely what information can be learned by the interpretation of blood stain patterns are similar for Tom Bevel and Ross M. Gardner, *Bloodstain Evidence at Crime Scenes*, 2d ed. (Boca Raton, FL: CRC Press, 2002); Stuart H. James and William G. Eckert, *Interpretation of Bloodstain Evidence at Crime Scenes*, 2d ed. (Boca Raton, FL: CRC Press, 1999); Edward E. Hueske, *Shooting Incident Investigation/Reconstruction Training Manual*, 2002; Louis L. Akin, *Blood Spatter Interpretation at Crime and Accident Scenes: A Step-By-Step Guide for Medicolegal Investigators*, (On Scene Forensics, 2004); and Paulette T. Sutton, *Bloodstain Pattern Interpretation: Short Course Manual* (University of Tennessee at Memphis, 1998).

---

Mr. Akin is a licensed professional investigator in Austin, Texas.

---

# **Revoking Consent to Search**

By JAYME W. HOLCOMB, J.D.

**T**he Fourth Amendment states that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause...."<sup>1</sup> Law enforcement officers, however, do not need probable cause or a warrant to conduct a search if a person with proper authority voluntarily consents to the search.<sup>2</sup> The U.S. Supreme Court, on a number of occasions, has stated that an individual may limit the scope of a consent to search by the terms of the authorization.<sup>3</sup> One of the most obvious ways that an individual may limit the consent to a search is by revoking the consent.

This article explores the issue of an individual's withdrawal of consent to search previously given to law enforcement officers. More particularly, the article discusses when consent can be withdrawn; what actions or statements courts have found sufficient or insufficient, whichever the case, to constitute a revocation; the



© Mark C. Ide

relevance of an officer having reasonable suspicion or probable cause prior to revocation; and whether a revocation of consent can be considered by law enforcement officers in determining the existence of reasonable suspicion or probable cause to conduct a search or seizure.

## **Withdrawal of Consent**

Unlike situations involving an individual limiting the scope of a consent search when the consent is first given, questions involving the withdrawal of consent arise after an individual already has consented to the

search. The prevailing view<sup>4</sup> is that an individual may revoke a previously given consent to search at any time prior to the discovery of the items sought.<sup>5</sup> In *United States v. Dyer*,<sup>6</sup> the U. S. Court of Appeals for the Seventh Circuit stated that "[C]learly a person may limit or withdraw his consent to a search and the police must honor such limitations. But, where a suspect does not withdraw his valid consent to a search for illegal substances before they are discovered, the consent remains valid and the substances are admissible as evidence."<sup>7</sup>



Ms. Holcomb serves as chief of the Legal Instruction Section, DEA Training Academy.

***The prevailing view is that an individual may revoke a previously given consent to search at any time prior to the discovery of the items sought.***

The predominant view that an individual may revoke previously given consent to search is not, however, without exceptions. For example, revocation of consent to search generally is not recognized in primarily two contexts—airport passenger screening and prison visitation.<sup>8</sup>

For example, in *United States v. Herzbrun*,<sup>9</sup> Herzbrun had gone to the Orlando airport, purchased a ticket, and walked to the security checkpoint where signs were posted informing passengers that if they passed through the checkpoint, they would be searched. When Herzbrun went through the checkpoint, X-ray machine security personnel could not identify a dark mass in the bottom of his bag. Herzbrun told security personnel that he had clothing at the bottom of the bag. However, when the screener opened the bag and felt inside, she could tell that the mass was not clothing.

At that point, Herzbrun told the screener to stop searching the bag and shut it on the screener's hand. Police were called to the scene, and Herzbrun was informed that to board the plane, the bag would have to be searched. Herzbrun then left the checkpoint and went to a taxi where officers placed him under arrest. Subsequently, a drug detection dog alerted to the bag, and the officers obtained a search warrant. A search of the bag revealed the presence of a pound of cocaine. The U.S. Court of Appeals for the Eleventh Circuit stated that Herzbrun "had no constitutional right to revoke his consent to a search of his bag once it entered the X-ray machine and he walked through the magnetometer."<sup>10</sup>

Other courts also have found that those who present "themselves at a security checkpoint thereby consent automatically to a search, and may not

revoke that consent if authorities elect to conduct a search."<sup>11</sup> Practically speaking, therefore, to avoid being searched at an airport screening checkpoint, an individual must choose not to fly before putting baggage down on the X-ray machine at the screening checkpoint. Another court taking this position has reasoned "a rule allowing a passenger to leave without a search after an inconclusive X-ray scan would encourage airline terrorism by providing a secure exit where detection was threatened."<sup>12</sup> While a few courts have expressed the view that an individual can withdraw from the screening process at any time,<sup>13</sup> given the heightened security concerns of today, it is likely that this view would no longer have much support.

The same rationale has been applied in the prison context. At least one court has held that once a prison visitor who is forewarned that all visitors will be searched and consents to the search, that consent cannot be withdrawn once the search begins.<sup>14</sup> That court reasoned

Defendant received fair notice that he would be thoroughly searched. After all, he was seeking to visit an inmate in a prison and he surely knew that the aims of the search to which he consented was first to deter contraband smuggling, and then, if deterrence failed, to detect the contraband....

Put another way, a rule allowing consent to be withdrawn at any time would encourage contraband smuggling into prisons by providing a secure escape for a smuggler whenever the search threatened to detect the contraband.<sup>15</sup>

Another issue that arises within the context of an individual revoking consent to search is whether law enforcement officers must conduct a consent search in a manner or time frame that gives the individual an opportunity to revoke the consent. Officers are not required to conduct consent searches in plain view of an individual.<sup>16</sup> For example, the U.S. Court of Appeals for the Fifth Circuit ‘has specifically rejected the notion ‘that enforcement officials must conduct all searches in plain view of the suspect, and in a manner slowly enough that he may withdraw or delimit his consent at any time during the search.’’’<sup>17</sup>

### **Actions or Statements Sufficient to Constitute Revocation**

The U.S. Supreme Court has ruled that a court reviewing whether an individual voluntarily consented to a search must consider the totality of the circumstances surrounding the consent.<sup>18</sup> The government has the burden to prove that a subject voluntarily consented to

a search.<sup>19</sup> While an individual can limit the scope of a consent search by law enforcement,<sup>20</sup> the individual has the burden to express that limitation.<sup>21</sup> To carry the burden of limiting or revoking consent to search, an individual’s withdrawal must be an “unequivocal act or statement of withdrawal.”<sup>22</sup>

© Mark C. Ide



An individual may revoke a validly given consent for law enforcement officers to search through statements, actions, or a combination of the two. For example, in *United States v. Bily*,<sup>23</sup> the court found that Bily’s statement to agents of “That’s enough, I want you to stop”<sup>24</sup> was an immediate revocation of consent. In *United States v. Ho*,<sup>25</sup> the U.S. Court of Appeals for the Fifth Circuit found that Ho consented to a search of his person and a portfolio he carried. The officer testified that Ho’s subsequent actions in struggling to retrieve

the portfolio from the officer during the course of the search made it obvious to the officer that Ho did not want the officer to look at the portfolio any longer. The officer found blank white plastic cards that were the size and shape of a credit card and counterfeit travelers checks in the portfolio. The court found that Ho’s struggle constituted a withdrawal of his earlier consent to search the portfolio.<sup>26</sup>

### **Actions or Statements Insufficient to Constitute Revocation**

In many cases, defendants will argue that their actions or statements made after they have given a law enforcement officer consent to conduct a search were sufficient to constitute an effective withdrawal of consent. Courts must determine whether the defendant’s statements or actions were clear and unequivocal and, thus, a sufficient revocation. Often, the courts reject the defendant’s claim.<sup>27</sup>

An example of a case in which an individual’s actions were insufficient to constitute a withdrawal of consent is the U.S. Court of Appeals for the Fourth Circuit case of *United States v. Lattimore*.<sup>28</sup> In this case, a law enforcement officer stopped Lattimore for speeding. Lattimore gave oral consent to a search of his car. However, when the officer presented Lattimore with a written consent to search form to sign, he

expressed concern about signing the form. He eventually signed the form, and the officer found cocaine, razor blades, a scale, and plastic bags during the search.

In examining the issue of whether Lattimore's expression of concern operated to revoke his original consent to search, the court stated, “[W]e do not hesitate to conclude that the search was proper because Lattimore never withdrew his oral consent to the search of his automobile. Indeed, it is undisputed that at no time did Lattimore expressly withdraw his consent for the search.”<sup>29</sup> The court also noted that “[i]t is clear, however, that a refusal to execute a written consent form subsequent to a voluntary oral consent does not act as an effective withdrawal of the prior oral consent.”<sup>30</sup> In *Lattimore*, the court found that even if he had refused to sign the written consent to search, the officer still could have searched the car on the basis of the valid oral consent.<sup>31</sup> The *Lattimore* court concluded by stating that “if Lattimore's refusal to sign the written consent form would not be adequate to affect a withdrawal of this consent, certainly his question concerning the form coupled with his subsequent signature of it cannot have been.”<sup>32</sup>

Similarly, in *United States v. Gray*,<sup>33</sup> the U.S. Court of

Appeals for the Eighth Circuit found that the defendant did not revoke consent to search a vehicle. In *Gray*, an officer pulled Gray over for weaving and following another car too closely. After issuing a citation and obtaining lies and conflicting stories from both the driver and the passenger, the officers obtained consent to search the vehicle from both occupants.

***An officer may develop reasonable suspicion or probable cause prior to or during the revocation of the consent to search.***

During the search, the officer noted that the car contained an excessive amount of luggage for the stated duration of the trip. Additionally, the officer found loose rivets in the rear of the car and some carpeting that had been spot glued down. After initially finding no contraband in the car, the officer's drug dog alerted to the vehicle, and the officer found 17.5 pounds of cocaine in the firewall.

During the course of the search, Gray and the passenger began to express concern about the length of time of the search.

Gray testified that he stated “[t]his is ridiculous” and asked “how long the search was going to take.”<sup>34</sup> After these comments, the officer had a second conversation with Gray wherein the officer testified that Gray merely asked that the search be speeded up and did not withdraw consent. Gray, however, testified that he again voiced concern over the length of the search and that he and his passenger were “ready to go now.” The court stated that

The district court found that Gray and Lawrence made “protests to leave,” but concluded that “there was no specific request to leave, and under the circumstance,... [the officer] was reasonable in continuing the search beyond the initial contact at 11:30.” The district court further found that when the defendants became “more strident about their desire to leave,” [the officer] decided to use Rudy, and only about 9 or 10 minutes elapsed between the time Gray first began objecting and the time Rudy alerted.... At most, Gray's first conversation with [the officer] amounted to an expression of impatience, which is not sufficient to terminate consent.<sup>35</sup>

Courts also have found that an individual's actions or statements have been insufficient to

constitute withdrawal of consent when the individual showed reluctance in admitting that he was carrying keys to luggage;<sup>36</sup> reached into the bag he had been carrying as the officer began to search it;<sup>37</sup> remained silent after being told that the driver consented to a search of a car while acknowledging ownership of a bag in the vehicle;<sup>38</sup> stated that he did not know anything about the existence of a compartment in the car he was driving;<sup>39</sup> and was placed under arrest.<sup>40</sup>

### **Reasonable Suspicion or Probable Cause Established Prior to Revocation**

An officer may develop reasonable suspicion or probable cause prior to or during the revocation of the consent to search.<sup>41</sup> For example, in *United States v. Black*,<sup>42</sup> two officers working in an airport approached a man, identified themselves as police, and asked if he would talk with them. The officers determined that the man was traveling on a first-class, one-way ticket purchased for cash under a fictitious name. The officers asked the man for consent to search his travel bag, and he agreed to the search. The man reached into the bag, pulled out a book, and handed it to one of the officers. The officer then reached into the bag, pulled out a shaving kit, looked through the kit, and

placed it on the floor next to the bag. The officer again reached into the bag, grasped a shirt, and began to take the shirt out of the bag. At this point, the other officer could see a clear plastic bag containing a white powder wrapped in the folds of the shirt. As the searching officer's hand reached the top of the open bag, the man grabbed the officer's wrist while pulling

© Mark C. Ide



his hand out of the bag and told him not to search any more. When the man took the officer's hand out of the bag, the bag containing the white powder fell out of the shirt to the bottom of the travel bag. The searching officer saw the plastic bag containing the white powder in plain view in the bottom of the travel bag and arrested the man.<sup>43</sup>

With regard to the attempted revocation of consent to search in this case, the court stated that

By the time that [the man] revoked his consent to the search of his travel bag, [the officer] was in the process of withdrawing the shirt in which the cocaine was wrapped from the travel bag. [The officer] could see the bag containing the white powder wrapped in the shirt and [the man's] clumsy and mistimed attempt to pull [the officer's] hand out of the bag was itself the cause of the cocaine coming into [the officer's] view.<sup>44</sup>

Even if an individual's statements or actions are sufficient to withdraw consent to search, officers may have established probable cause prior to the revocation. In *United States v. West*,<sup>45</sup> a deputy sheriff stopped an individual for speeding on a highway. During the course of the traffic stop, the deputy noticed that the individual's hands were shaking and there was a distinct odor of air freshener about the car. The deputy asked the individual for consent to search the vehicle. After obtaining consent to search, the deputy took the car keys, opened the trunk, and detected the odor of methamphetamine. The individual stated that the deputy could not search a locked briefcase found in the trunk, but otherwise did not limit the search of the car in any way. The deputy detected the odor of methamphetamine

coming from a zippered bag in the trunk. The bag had a lock on it but it was not fully closed.

The deputy put his fingers through an opening in the bag and could feel plastic and a package he believed contained methamphetamine. The deputy placed the individual under arrest.<sup>46</sup>

The court found that the individual had given valid consent for the deputy to search the car. The defendant argued that consent to search had been withdrawn prior to the deputy finding the contraband. The U.S. Court of Appeals for the Tenth Circuit concluded that

We decline to decide whether West's consent to search the car was revoked by him refusing permission to open the locked briefcase because [the deputy], in the course of the consent search, acquired probable cause to search the zippered bag, rendering consent by West irrelevant.<sup>47</sup>

The *West* court noted that it is well established that probable cause to search a car can be developed during the course of a traffic stop even if it did not exist at the time the car was initially stopped for a traffic violation. In *West*, the court concluded that the deputy had probable cause to search the bags in the trunk when he smelled a strong odor of

methamphetamine as soon as he opened the trunk.<sup>48</sup>

### **Revocation as a Factor in Establishing Reasonable Suspicion or Probable Cause**

If reasonable suspicion or probable cause to search or seize has not been established prior to an individual's withdrawal of consent, the reliance on the withdrawal of consent as a factor to establish the existence of reasonable suspicion

“

***An individual may revoke a validly given consent for law enforcement officers to search through statements, actions, or a combination of the two.***

”

or probable cause becomes an issue. The U.S. Court of Appeals for the District of Columbia has stated that “[t]he constitutional right to withdraw one's consent to a search would be of little value if the very fact of choosing to exercise that right could serve as any part of the basis for finding the reasonable suspicion that makes consent unnecessary.”<sup>49</sup> And yet, another court addressing the issue noted that “[m]ere refusal to consent

to a stop or search does not give rise to reasonable suspicion or probable cause.”<sup>50</sup>

Even though the revocation of consent to search generally cannot be used to establish reasonable suspicion or probable cause, actions taken by an individual after withdrawing consent to search have been found to contribute to the existence of reasonable suspicion.<sup>51</sup> Additionally, in the U.S. Court Appeals for the Fourth Circuit decision of *United States v. Wilson*,<sup>52</sup> the court stated that “[w]e are not prepared...to rule that the form of denial never can be included as a factor to be considered in determining whether an investigative stop was justified.”<sup>53</sup> With regard to this statement, one judge noted

While the Fourth Circuit did indeed refuse to establish any per se rule that the way consent is denied can never be considered in the reasonable suspicion calculus, it also refused to permit the manner of declining consent to be the factor that “pushes the situation into the realm of ‘reasonable suspicion.’” I agree with the Fourth Circuit that in all but the most extraordinary circumstances the police should have sufficient objective evidence for an investigative detention independent of the refusal or

withdrawal of consent and the manner in which either is executed.<sup>54</sup>

Finally, while the revocation of consent to search may generally not be used to establish reasonable suspicion or probable cause, such a revocation can be used to demonstrate that an individual understood that he had the right to refuse to consent to a search by police. For example, in *United States v. Matau*,<sup>55</sup> the court stated that “Matau’s understanding that he could refuse consent is evidenced by his withdrawal of his earlier consent to search his bag.”<sup>56</sup>

## Conclusion

The predominant legal view is that an individual can limit the scope of a consent to search by revoking the consent given to law enforcement officers. However, within certain contexts, such as airport screening, the prevailing view is that an individual cannot withdraw consent to search once consent has been given and the search has begun. While an individual can withdraw consent either verbally or through action, such a revocation must be clear and unequivocal. Therefore, law enforcement officers must be aware of both the context in which the consent to search is withdrawn and the exact manner in which the individual revoked consent to search.

Officers should remember that in any consent to search situation, a court will analyze the totality of the circumstances surrounding the consent to search and the reasonableness of the officer’s actions. Additionally, officers need to be aware that an ambiguous withdrawal of consent to search is not effective to constitute a true withdrawal.

Law enforcement officers may establish reasonable suspicion or probable cause during the course of a consent search to conduct a subsequent search or seizure. Therefore, officers should focus on exactly what they are observing during the course of the search to be able to articulate what specifically was seen and why it may contribute to a finding of reasonable suspicion or probable cause in case an individual revokes consent to search prior to finding the object of the search. As with any consent search issue, officers must be extremely diligent about providing extensive detail regarding what they did and said and what the individual did and said during the course of obtaining consent to search, the search itself, any attempted revocation or withdrawal of consent, and after the search is finished. ♦

## Endnotes

<sup>1</sup>U.S. CONST. Amend. IV.

<sup>2</sup>*Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973).

<sup>3</sup>*Id.; Florida v. Jimeno*, 500 U.S. 248, 252 (1991).

<sup>4</sup>See *United States v. Springs*, 926 F.2d 1330, 1334 (D.C. Cir. 1991); *United States v. Black*, 675 F.2d 129 (7th Cir. 1982); *United States v. Ward*, 576 F.2d 243, 244 (9th Cir. 1978); *United States v. Seely*, 570 F.2d 322, 323 (10th Cir. 1978); *Mason v. Pulliam*, 557 F.2d 426, 428-29 (5th Cir. 1977). See also 3 Wayne R. LaFave, *Search and Seizure* § 8.1(c) (3d ed. 1996).

<sup>5</sup>In contrast, the contrary and distinctly minority view articulated in two old state cases is that once an individual consents to a search, that consent cannot subsequently be withdrawn. *Smith v. Commonwealth*, 246 S.W. 449 (Kent. 1923); *People v. Kennard*, 488 P.2d 563 (Colo. 1971). See also 3 Wayne R. LaFave, *Search and Seizure* § 8.1(c) (3d ed. 1996).

<sup>6</sup>784 F.2d 812 (7th Cir. 1986).

<sup>7</sup>*Id.* at 817. See also *United States v. Cady*, 22 C.M.A. 408 (1973). “We see no reason to hold that a consent to search must be unlimited in scope. Neither do we find any reason to hold that a consent, once given may not be withdrawn. It is true that the contrary view has been expressed.”

<sup>8</sup>There also is authority stating that “when an employee as a condition of employment has agreed to be searched by his employer, it is questionable at best whether the employee may freely withdraw his consent, short of resignation.” *United States v. Alfaro*, 935 F.2d 64, 67 (5th Cir. 1991).

<sup>9</sup>723 F.2d 773 (11th Cir. 1984).

<sup>10</sup>*Id.* at 778.

<sup>11</sup>*Id.* at 776. See also *United States v. McKennon*, 814 F.2d 1539 n.12 (11th Cir. 1987); *United States v. Wehrli*, 637 F.2d 408 (5th Cir.), cert. denied, 452 U.S. 942 (1981); *United States v. DeAngelo*, 584 F.2d 46, 48 (4th Cir. 1978), cert. denied, 440 U.S. 935 (1979); *United States v. Cyzewski*, 484 F.2d 509 (5th Cir. 1973), cert. denied, 415 U.S. 902 (1974); *United States v. Skipwith*, 482 F.2d 1272 (5th Cir. 1973); *United States v. Bell*, 464 F.2d 667 (2d Cir.), cert. denied, 409 U.S. 991 (1972).

<sup>12</sup>*United States v. Pulido-Baquerizo*, 800 F.2d 899, 902 (9th Cir. 1986). See also *United States v. Haynie*, 637 F.2d 227, 230 (4th Cir. 1980) (“It appears to us that a rule under which consent to a screening search is limited by the availability to withdraw at any time could only encourage attempted hijackings by providing a secure exit should detection be threatened.”).

<sup>13</sup>*United States v. Freeland*, 562 F.2d 383 (6th Cir. 1977), cert. denied, 434 U.S. 957 (1977) (defendant could have withdrawn

consent to search checked baggage); *United States v. Homburg*, 546 F.2d 1350 (9th Cir. 1976), cert. denied, 431 U.S. 940 (1977).

<sup>14</sup> *United States v. Spriggs*, 827 F. Supp. 372 (E.D. Va. 1993), aff'd, 30 F.3d 132 (4th Cir. 1994).

<sup>15</sup> *Id.* at 375.

<sup>16</sup> See, e.g., *United States v. George*, 987 F.2d 1428 (9th Cir. 1993); *United States v. Lechuga*, 925 F.2d 1035, 1041 (7th Cir. 1991).

<sup>17</sup> *United States v. Dominguez*, 911 F. Supp. 261, 262 (S.D. Tex. 1995) (quoting *United States v. Rich*, 992 F.2d 502, 507 (5th Cir. 1993)).

<sup>18</sup> *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973).

<sup>19</sup> *Bumper v. North Carolina*, 391 U.S. 543 (1968).

<sup>20</sup> *Florida v. Jimeno*, 500 U.S. 248 (1991).

<sup>21</sup> *United States v. Kim*, 27 F.3d 947, 957 (3rd Cir. 1994), cert. denied, 513 U.S. 1110 (1995).

<sup>22</sup> *United States v. Ross*, 263 F.3d 844, 846 (8th Cir. 2001) (citing *United States v. Martel-Martinez*, 988 F.2d 855, 585 (8th Cir. 1993); *United States v. Lyton*, 161 F.3d 1168, 1171 (8th Cir. 1998)).

<sup>23</sup> 406 F. Supp. 726 (E.D. Pa. 1975).

<sup>24</sup> *Id.* at 726.

<sup>25</sup> 94 F.3d 932 (5th Cir. 1996).

<sup>26</sup> *Id.* See also *United States v. Fletcher*, 91 F.3d 48 (8th Cir. 1996) (defendant revoked consent to search luggage after being informed he could withhold consent); *United States v. Carter*, 985 F.2d 1095 (D.C. Cir. 1993) (defendant revoked consent to search a brown paper bag he carried when he grabbed the bag from the officer and later verbally confirmed that he did not want the officer to search the bag). But see *United States v. Flores*, 48 F.3d 467 (10th Cir. 1995) (The defendant consented to a search of a car at an immigration checkpoint and opened the trunk. After being asked to step away from the car during the search, the defendant shut the trunk. The defendant reopened the trunk after being told that the search had not been completed. After the defendant reopened the trunk and the search resumed, officers found marijuana in the door frame. The court stated that “[b]ecause we hold that defendant voluntarily consented to the continued search of her car by reopening the trunk, we assume, without deciding, that defendant revoked her initial consent by closing the trunk.”); *United States v. Akins*, 995 F. Supp. 797, 807 (M.D. Tenn. 1998) (Once the defendant invoked his Fifth Amendment right

to counsel, the defendant “effectively withdrew his consent to speak with the officers, and by extension his consent to be searched.”); *Metcalf v. Long*, 615 F. Supp. 1108, 1117 (D. Del. 1985) (The defendant’s statement that “If you want to go in there, kick the door in” is not an explicit withdrawal of consent, but its import is apparent. The court found “that even if defendant’s version of the facts was correct and Metcalf initially consented to the search, his later noncooperation with the officers indisputably indicates that his consent was no longer effective.”).

<sup>27</sup> See, e.g., *United States v. Ross*, 263 F.3d 844 (8th Cir. 2001); *United States v. Alfaro*, 935 F.2d 64, 67 (5th Cir. 1991).

<sup>28</sup> 87 F.3d 647 (4th Cir. 1996).

<sup>29</sup> *Id.* at 651.

<sup>30</sup> *Id.* (citing *United States v. Thompson*, 876 F.2d 1381, 1384 (8th Cir.), cert. denied, 493 U.S. 868 (1989)); *United States v. Castillo*, 866 F.2d 1071, 1081-82 (9th Cir. 1988); *United States v. Boukater*, 409 F.2d 537, 539 (5th Cir. 1969)).

<sup>31</sup> For additional information regarding this issue, see Jayme W. Holcomb, “Obtaining Written Consent to Search,” *FBI Law Enforcement Bulletin*, March 2003, 26.

<sup>32</sup> *United States v. Lattimore*, 87 F.3d 647, 652 (4th Cir. 1996).

<sup>33</sup> 369 F.3d 1024 (8th Cir. 2004).

<sup>34</sup> *Id.* at 1026.

<sup>35</sup> *Id.* at 1029. See also *United States v. Ross*, 263 F.3d 844 (8th Cir. 2001).

<sup>36</sup> *United States v. Brown*, 884 F.2d 1309, 1311 (9th Cir. 1989), cert. denied, 493 U.S. 1025 (1990).

<sup>37</sup> *United States v. Joseph*, 892 F.2d 118, 122 (D.C. Cir. 1989).

<sup>38</sup> *United States v. West*, 321 F.3d 649 (7th Cir.), cert. denied, 124 S. Ct. 385 (2003).

<sup>39</sup> *United States v. Bullock*, 877 F. Supp. 270 (E.D. Va. 1995), aff'd, 94 F.3d 896 (4th Cir. 1996).

<sup>40</sup> *United States v. Mitchell*, 82 F.3d 146 (7th Cir.), cert. denied, 519 U.S. 856 (1996).

<sup>41</sup> See, e.g., *United States v. Booker*, 186 F.3d 1004 (8th Cir. 1999) (probable cause established prior to revocation of consent to search); *United States v. Newsome*, 124 F. Supp. 2d 1301 (E.D. Tex. 2000) (reasonable suspicion to detain defendant while awaiting arrival of drug dog established prior to withdrawal of consent to search).

<sup>42</sup> 510 F. Supp. 989 (N.D. Ill. 1981), aff'd, 675 F.2d 129 (7th Cir. 1983).

<sup>43</sup> *Id.* at 992.

<sup>44</sup> *Id.* at 993.

<sup>45</sup> 219 F.3d 1171 (10th Cir. 2000).

<sup>46</sup> *Id.* at 1174.

<sup>47</sup> *Id.* at 1177.

<sup>48</sup> *Id.* at 1179. Under the motor vehicle exception to the search warrant requirement, police may search a motor vehicle without a search warrant if the search is supported by probable cause. *California v. Acevedo*, 500 U.S. 565 (1991); *United States v. Ross*, 456 U.S. 798 (1982).

<sup>49</sup> *United States v. Carter*, 985 F.2d 1095, 1097 (D.C. Cir. 1993) (citations omitted). See also *United States v. Skidmore*, 894 F.2d 925, 927 (7th Cir. 1990) (“Skidmore is correct in arguing, and the government does not contest, that a law enforcement official cannot consider Skidmore’s refusal to consent as a factor in the official’s determination of reasonable suspicion.”).

<sup>50</sup> *United States v. Fuentes*, 105 F.3d 487, 490 (9th Cir. 1997). See also *United States v. Fletcher*, 91 F.3d 48, 51 (8th Cir. 1996) (“under these facts, no adverse inference can be drawn from Fletcher’s revocation of his consent to search his bag.”); *United States v. Taxacher*, 902 F.2d 867, 872 n.6 (11th Cir. 1990).

<sup>51</sup> *United States v. Carter*, 985 F.2d 1095, 1097 (D.C. Cir. 1993) (“Carter had withdrawn his consent when he retook the bag. His subsequent offer to show Detective Buss the food did not constitute a second consent, for he did not propose to allow the police officer to search the bag but instead indicated that he would himself show the officer the food he said it contained. For us to countenance the officer’s reasonable suspicion based upon such post-withdrawal conduct in no way bears upon the extent to which reasonable suspicion may be based upon “the manner” in which consent is withdrawn.”).

<sup>52</sup> 953 F.2d 116 (4th Cir. 1991).

<sup>53</sup> *Id.* at 126.

<sup>54</sup> *United States v. Carter*, 985 F.2d 1095, 1100 (D.C. Cir. 1993) (Wald, J., dissenting).

<sup>55</sup> 191 F. Supp. 2d 1173 (D. Hawaii 2002).

<sup>56</sup> *Id.* at 1184.

---

*Law enforcement officers of other than federal jurisdiction who are interested in this article should consult their legal advisors. Some police procedures ruled permissible under federal constitutional law are of questionable legality under state law or are not permitted at all.*

---

# The Bulletin Notes

Law enforcement officers are challenged daily in the performance of their duties; they face each challenge freely and unselfishly while answering the call to duty. In certain instances, their actions warrant special attention from their respective departments. The *Bulletin* also wants to recognize those situations that transcend the normal rigors of the law enforcement profession.



Officer Russell



Officer Pickreign

Officers James Russell and Robert Pickreign of the Malone, New York, Police Department responded to a residence where a man was preparing to hang himself, distraught over a recently ended romance. After finding the front door locked, the two officers entered through the rear. Once inside, Officers Russell and Pickreign announced their presence and cautiously approached the man, who was upstairs standing on a stepladder with a noose around his neck. The individual was sobbing, with family photos spread across the floor below him. The two officers talked with the

man as they drew closer to him. After seeing the individual look down at the pictures and then slowly step off the ladder in an attempt to take his life, Officer Pickreign immediately grabbed him and Officer Russell jumped on the ladder and cut through the rope. Officer Pickreign lowered the man to the ground and secured his hands. The two officers then carefully removed the noose from the individual's neck, handcuffed him, and ensured that he received safe transport to the hospital for medical care. The attentive and professional actions of these two officers prevented a tragic situation.



Officer Allen

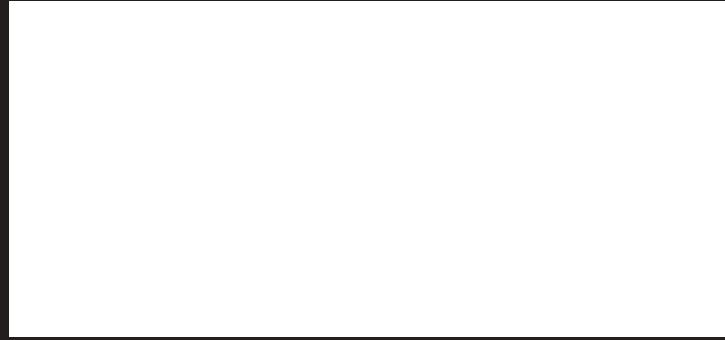
Officer Eric Allen of the Colonial Heights, Virginia, Police Department responded to a call involving a young girl who had fallen through ice-covered water that filled a deep gravel pit. He arrived in time to see the child's father, in an obvious panic, jump into the water and become a second victim in need of rescue. Immediately, Officer Allen climbed down a steep hill to the water's edge, grabbed onto a tree, and offered his free arm to the girl. After pulling the child out of the water and placing her up the hill, away from the water's edge, Officer Allen rescued the father. Because of the composure and quick thinking of this officer, two lives were saved from certain drowning in frigid water.

Nominations for the **Bulletin Notes** should be based on either the rescue of one or more citizens or arrest(s) made at unusual risk to an officer's safety. Submissions should include a short write-up (maximum of 250 words), a separate photograph of each nominee, and a letter from the department's ranking officer endorsing the nomination. Submissions should be sent to the Editor, *FBI Law Enforcement Bulletin*, FBI Academy, Madison Building, Room 201, Quantico, VA 22135.

**U.S. Department of Justice**  
Federal Bureau of Investigation  
*FBI Law Enforcement Bulletin*  
935 Pennsylvania Avenue, N.W.  
Washington, DC 20535-0001

Periodicals  
Postage and Fees Paid  
Federal Bureau of Investigation  
ISSN 0014-5688

Official Business  
Penalty for Private Use \$300



## *Subscribe Now*



**United States Government  
INFORMATION**

Order Processing Code:

\* 5902

YES, please send \_\_\_\_\_ subscriptions to:  
**FBI Law Enforcement Bulletin**

The total cost of my order is \$ \_\_\_\_\_.

**Credit card orders are welcome!**

Fax orders: (202) 512-2250

Phone orders: (202) 512-1800

Online orders: bookstore.gpo.gov

(FBI Law Enforcement Bulletin) at \$36 each (\$45 foreign) per year.

Price includes regular shipping & handling and is subject to change.

**Check method of payment:**

Check payable to: Superintendent of Documents

GPO Deposit Account  -

VISA  MasterCard  Discover

(expiration date)

Authorizing signature

1/2001

Mail to: Superintendent of Documents, PO Box 371954, Pittsburgh PA 15250-7954

**Important: Please include this completed order form with your remittance.**

**Thank you for your order!**